

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 410 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FATIMABEN MANSURBHAI BHATIA

Versus

BHANUBEN WD/O ALIHUSEN G RAWAT

Appearance:

MR MIHIR H JOSHI for Petitioner
MR PK JANI for Respondent No. 1
SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 15/04/96

ORAL JUDGEMENT

1. The petitioner-defendant is aggrieved by the order passed by the trial court, dated 7.3.96. It appears that the suit is filed by the respondent-plaintiff on 26.2.96, but as the caveat has been filed the court did not pass any order on application for temporary injunction. On 27.2.96 the court has directed the parties to maintain statusquo.

The dispute between the parties relates to the common wall between the two houses. It is the case of the plaintiff that the defendants are damaging the common wall or are interfering with his right vis-a-vis common wall and that it they should be restrained from putting up any construction which would offend their right of enjoying the common wall. As against the aforesaid say of the plaintiff the case of the defendant is that the dispute simply relates to common wall and not damage allegedly caused to common wall or any encroachment made vis-a-vis common wall. The court commissioner is appointed who has also submitted his report and that the defendant is ready and willing to maintain statusquo with respect to common wall because beyond the right to common wall there is no other right claimed by the plaintiffs. It is the case of the defendants that excepting the common wall or without touching the common wall in any manner whatsoever they want to construct in the middle of their property so as to apply plaster to the kitchen and/or as to fix tiles etc. They should not be restrained from carrying on such construction by order of statusquo which is ambiguous order and therefore the order passed by the trial court on 7.3.96 is challenged.

2. Having heard Mr.Mihir Joshi Ld.advocate for defendant and Mr.P.K.Jani, Ld.advocate for respondent Nos 1 to 3 and having seen the photograph of the premises and having realised the counter-allegation made by both the parties this court is of the opinion that this is a fit case where the trial court should forthwith decide application-Exh.5 without any delay whatsoever. In dispute of this nature the delay is likely to defeat the justice and therefore the petitioner-defendant is directed to file his written reply to application-Exh.5 for temporary injunction within three days from today, i.e. by 18.4.96. Respondent-plaintiff shall file any rejoinder if they want to file within two days thereafter and the trial court is directed to hear and decide application-Exh.5 peremptorily on 22.4.96 and in any case to deliver judgment on or before 25.4.96.

3. Excepting aforesaid no other directions could be issued in this matter. Rule is discharged. No costs.

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